Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C.

In the Matter of)
Joint Applications of Sprint Nextel Corporation, Transferor,)))
SOFTBANK CORP., and Starburst II, Inc., Transferees,) IB Docket No. 12-343
for Consent to Transfer of Control of Licenses and Authorizations)
and)
Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as Amended)))

JOINT REPLY TO COMMENTS

Sprint Nextel Corporation ("Sprint"), Starburst I, Inc., Starburst II, Inc., and SOFTBANK CORP. ("SoftBank") (collectively, the "Applicants") hereby reply to the comments filed by the Consortium for Public Education and the Roman Catholic Diocese of Erie, Pennsylvania (the "Consortium"). In its comments, the Consortium supports the Verizon Wireless suggestion that the Federal Communications Commission (the "Commission") include nearly all Educational Broadband Service ("EBS") and Broadband Radio Service ("BRS") spectrum under its spectrum screen. The Consortium also states that the Commission should require Clearwire Corporation ("Clearwire") to divest EBS lease rights. The Commission should reject the claims set forth in

Consortium Comments (Feb. 12, 2013). (Unless otherwise indicated, all comments and petitions cited herein were filed in IB Docket No. 12-343.) The Consortium previously filed a Petition to Deny in this proceeding, but did not address the issues discussed in its comments. Consortium Petition to Deny (Jan. 28, 2013) ("Consortium Petition to Deny"). This is the Applicants' first opportunity to reply to the Consortium Comments. The Consortium also filed its comments in the Commission's mobile spectrum holdings rulemaking (WT Docket No. 12-269), but the pleading cycle in that proceeding closed well over a month ago.

the Consortium Comments. Clearwire has authorized the Applicants to state that Clearwire also opposes the arguments set forth in the Consortium Comments.

As an initial matter, it is apparent that the Consortium in no way speaks for the EBS community. To the contrary, two of the leading organizations representing EBS licensees – the Catholic Television Network ("CTN") and the National EBS Association ("NEBSA") – have stated that the Consortium's "views are at odds with those of the EBS community as a whole," and dozens of individual EBS licensees opposed the Consortium Petition to Deny, describing the petition's claims regarding the use of EBS spectrum as "bewildering," "simply wrong," "inaccurate and unfair," and "confusing, tortured and misleading." Indeed, one EBS licensee accurately describes the Consortium as "two small entities seeking to gain leverage over a commercial operator in insular EBS leasing matters." The comments are simply a pretext for the Consortium to reiterate their unwarranted demand for the Commission to release them from their lease obligations to Clearwire so that they can seek a more lucrative lease elsewhere. The Commission should reject any attempt to abuse its merger review process.

Moreover, there is no merit to any of the claims made in the Consortium comments. The record shows that there is no reason to change the spectrum screen and, in any event, spectrum aggregation issues are irrelevant to this proceeding because Clearwire's spectrum already is attributed to Sprint. In addition, there is no basis for requiring divestiture of Clearwire's EBS lease right.

² CTN and NEBSA Opposition at 1, 3 (Feb. 11, 2013); 32 EBS Parties Opposition at 2 (Feb. 12, 2013); Five EBS Licensees Comments at 1 (Feb. 12, 2013); Hispanic Information and Telecommunications Network ("HITN") Comments at 3 (Feb. 12, 2013).

³ HITN Comments at 5.

Although the Consortium's two filings in this proceeding neglect to disclose this fact, the parties that make up the Consortium have initiated private contractual disputes with Clearwire. *See* SoftBank/Sprint Opposition at 56 n.178 (Feb. 12, 2013).

I. There Is No Basis for Re-Evaluating the Spectrum Screen As Part of This Proceeding.

The Commission has initiated a comprehensive rulemaking proceeding to examine its spectrum aggregation and spectrum screen policies, including whether additional spectrum should be added to the screen; whether different bands with different propagation, licensing and other characteristics should be weighted differently; and whether the screen should be modified in other respects. A well-developed record exists in that proceeding and any consideration of the Verizon Wireless and Consortium spectrum screen proposals should be conducted with the benefit of the full record and comments in that proceeding, *not* in this merger review proceeding. Their proposal to count nearly all 2.5 GHz spectrum under the screen would produce absurd results and fundamentally alter the Commission's competition and spectrum aggregation policies. Such far-reaching proposals are best considered in a proceeding of general applicability in which all interested parties have had the opportunity to address whether the screen achieves its competition-enhancing purposes.

Considering the Consortium's spectrum screen and spectrum aggregation claims is particularly inappropriate in this proceeding because these claims are irrelevant to the Commission's review of the SoftBank/Sprint and Sprint/Clearwire merger transactions. These transactions do not result in any new spectrum aggregation. SoftBank holds no attributable interests in U.S. spectrum licenses or leases, and the Commission already has approved the combination of the Sprint/Clearwire spectrum holdings in its 2008 *Sprint-Clearwire Order* and

Policies Regarding Mobile Spectrum Holdings, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012) ("Spectrum Aggregation NPRM").

fully attributes that spectrum to Sprint.⁶ The Consortium provides no basis to apply any spectrum screen modification retroactively to a combination that already has been approved.⁷

To support its argument that all EBS and BRS spectrum should be counted as part of the Commission's spectrum screen analysis, the Consortium argues that there are no obstacles to deploying commercial mobile service on EBS spectrum, including the Middle Band Segment ("MBS") designated for high-power use. As "proof" of its claims, it cites a limited number of substantial service showings filed by certain EBS licensees in 2011 that show that Clearwire has deployed service on leased EBS spectrum, as they were required to do by the Commission.⁸

Nothing in the substantial service showings cited by the Consortium provides any basis for reversing the Commission's longstanding policy of including 55.5 MHz of BRS spectrum, and none of the EBS spectrum, under its spectrum screen. To the contrary, as SoftBank and Sprint previously explained, the Commission's treatment of the 2.5 GHz band for spectrum

See Sprint Nextel Corporation and Clearwire Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶¶ 3, 77, 124, 127 (2008) ("Sprint-Clearwire Order"), aff'd Order on Reconsideration, FCC 12-157 (rel. Dec. 19, 2012). See also SoftBank/Sprint Opposition at 31-32. The Consortium notes that Clearwire has acquired additional spectrum rights since 2008, Consortium Comments at 5-6, but the Commission has reviewed and approved these additional transactions, and, in doing so, has taken Sprint's attributable interest in Clearwire into account where it is relevant. See Applications of Wireless Telecommunications, Inc., Memorandum Opinion and Order, 24 FCC Rcd 3177, ¶¶ 21-24 (2009) (applying spectrum screen to Sprint in reviewing and approving Clearwire's acquisition of four BRS licenses).

In fact, the Commission has stated that any spectrum screen modifications adopted in the mobile spectrum holdings rulemaking will have prospective effect only. *Spectrum Aggregation NPRM* ¶ 49 ("[W]e would not anticipate revisiting licensees' current spectrum holdings under any revised policy, but instead we would anticipate grandfathering those holdings."). The Commission should therefore reject the Consortium's suggestion that these transactions be deferred until the Commission completes its pending review of the spectrum screen. Consortium Comments at $7 \, \text{n.} 16$.

Consortium Comments at 2. Trying to have it both ways, the Consortium previously falsely argued that the EBS licensee substantial service filings that relied on Clearwire's network to support their showings were insufficient under the Commission's rules. Consortium Petition to Deny at 6-8.

screen purposes reflects a number of licensing, legacy regulatory, propagation and technical factors that complicate the utility of this spectrum for deploying competitive mobile broadband services. Moreover, the EBS community has previously opposed including EBS spectrum under the screen, emphasizing that EBS spectrum is governed by a unique set of rules designed to advance educational objectives that do not apply to other spectrum bands used for commercial mobile service.

The Commission's existing policy for considering the competitive effect of BRS and EBS spectrum holdings promotes competition and properly accounts for these factors in relation to other spectrum bands used to provide mobile broadband communications services. The Consortium appears to assert that an EBS licensee's showing that it has met the Commission's "substantial service" build-out requirements somehow overrides the real world network deployment realities affecting the 2.5 GHz band. The Consortium's "showing" demonstrates nothing of the sort and warrants no further consideration.

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SoftBank/Sprint Opposition at 30-31. *See also* Sprint Reply Comments, WT Docket No. 12-269, at 19-28 (Jan. 7, 2013). The Consortium's assertion in its Comments (at 5) that "concerns regarding the geographic licensing of EBS spectrum as a reason not to include it in the spectrum screen are overblown" is unfounded and entirely disregards the continuing licensing complexities – including that EBS licenses are based on non-uniform, irregularly-shaped "coverage" areas originally associated with a central transmitter rather than uniformly defined geographic areas. Combining EBS leases to create a broadband channel plan is often difficult, requiring successful negotiations with multiple EBS licensees. Large areas have no EBS licensees at all, further complicating the assembly of EBS channels for broadband deployments. *See Sprint-Clearwire Order* ¶ 71.

NEBSA Opposition, WT Docket No. 08-94, at 3-7 (Aug. 4, 2008); CTN Comments, WT Docket No. 08-94, at 2-3 (Aug. 4, 2008); *see also* Source for Learning, Inc. ("SFL") and Indiana Higher Education Telecommunication System Joint Opposition, WT Docket No. 08-94 (Aug. 4, 2008).

The Commission's spectrum screen is intended to provide an approximate measure in a defined geographic area of spectrum aggregation through either secondary market transactions or spectrum auctions that may have the ability to hinder competition, and thus warrant more detailed analysis. *See Spectrum Aggregation NPRM* ¶¶ 8, 17.

II. Clearwire's EBS Leases Create Significant Benefits that Would Be Lost If the Consortium's Divestiture Proposal Were Adopted.

The Consortium next claims that Clearwire's alleged bargaining power justifies a Commission decision to require the divestiture of Clearwire's EBS lease rights. The Consortium, however, provides no support whatsoever for these vague assertions. Indeed, the Consortium contradicts its own claims by conceding that there is a significant amount of available EBS spectrum that other parties have not sought to lease, and that Clearwire has unsuccessfully tried to sell some of its 2.5 GHz spectrum rights to other parties.

Further, the Consortium ignores the effective partnership Clearwire and the EBS community has built to advance EBS licensees' educational mission, and the serious harm to this mission that would result if the Commission mandated divestiture of EBS spectrum leases.¹⁴ Contrary to the Consortium's isolated claims that the education community would be better off if

¹² Consortium Comments at 3-4.

Id. at 3 n.8 and 4 n.12. See also Clearwire, Preliminary Proxy Statement (Form PREM14A), at 29-30 (Feb. 1, 2013) ("Clearwire Proxy Statement"), http://corporate.clearwire.com/secfiling.cfm?filingID=1193125-13-33200&CIK=1442505. The Consortium alludes to an offer by DISH Network L.L.C. ("DISH") to acquire certain spectrum rights from Clearwire, but, contrary to the Consortium's assertions, there is no definitive offer. Consortium Comments at 4. Clearwire itself characterizes DISH's offer as a preliminary expression of interest, not a definitive agreement. Clearwire Proxy Statement at 32.

See CTN and NEBSA Opposition at 5 ("CTN and NEBSA firmly believe that effective use of EBS has been greatly enhanced by the strategic partnerships that have been forged between educators and commercial operators, including Clearwire. The secondary market for EBS spectrum has facilitated delivery of high-quality educational services at a reasonable cost."); 32 EBS Parties Opposition at 4 ("The EBS Parties . . . have worked successfully with Clearwire to utilize services on the Clearwire system in their markets for purposes that further the educational missions of themselves and/or other accredited schools."); HITN Comments at 2-3 ("Clearwire has proved to be a good partner to educators Clearwire has gone above and beyond to help educators in pre-launch markets to establish educational uses for equipment operational in only a portion of the Licensee's service area."); SFL Opposition at 1-2 (Feb. 12, 2013) ("SFL has found Clearwire to be a good partner in advancing SFL's educational mission . . ."); Five EBS Licensees Comments at 5 ("In fact, Clearwire has benefited the EBS Licensees' educational and non-profit work in ways that go beyond its obligations.").

the Commission forced Clearwire to divest EBS spectrum, the vast majority of the EBS community maintains that divestiture would be highly disruptive and unwarranted. As thirty-two EBS Parties explained in their combined Opposition to the Consortium petition, "any condition on the approval of the transaction at issue here that requires a divestiture of EBS assets or termination of EBS leases would cause unimaginable hardship and dislocation to the EBS Parties and the entire EBS licensee community, and would result in serious harm to the cause of education in the United States. . . . [The Consortium's] urging the Commission in essence to 'blow up' the existing Clearwire - EBS ecosystem is the height of irresponsibility."¹⁵

While the members of the Consortium may wish to alter the terms of their Clearwire leases, that is not a basis to condition or deny the proposed transactions. To the contrary, the Commission has often stated that it will not allow disgruntled business partners to raise private issues in the context of an application for assignment or transfer. The Commission should adhere to that approach here and dismiss the Consortium's claims.

Respectfully submitted,

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February 25, 2013

¹⁵ 32 EBS Parties Opposition at 6-7.

See SoftBank/Sprint Opposition at 45 n.142.

Certificate of Service

I hereby certify that on this 25th day of February, 2013, I caused true and correct copies of the foregoing Joint Reply to Comments to be to be mailed by electronic mail to:

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